

1 MICHAEL W. MALTER, #96533  
DAVID B. RAO, #103147  
2 Binder & Malter, LLP  
2775 Park Avenue  
3 Santa Clara, CA 95050  
Telephone: (408)295-1700  
4 Facsimile: (408) 295-1531  
Email: Michael@bindermalter.com

5 Attorney for Debtors  
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8 **UNITED STATES BANKRUPTCY COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**

10 In re

11 GEORGE EARL WEISEL, dba ONE  
12 CALL PROPERTY SERVICE and  
ANGELINA CECILIA WEISEL,

13  
14 Debtors.  
15

Case No. 09-56955-RLE

Chapter 13

DATE: September 16, 2010  
TIME: 2:00 p.m.  
ROOM: 3099

16 **MOTION TO VALUE COLLATERAL AND AVOID LIEN**

17 COMES NOW Debtors George Earl Weisel and Angelina Cecilia Weisel and  
18 move the Court to value the collateral and enter an order avoiding the Abstract of  
19 Judgment held by James Parivash, Effat Parivash and New England Glass & Dorr, Inc.  
20 (hereinafter the "Lienholders") on the grounds the Abstract of Judgment is wholly  
21 unsecured. In support of this motion, the Debtors state the following:

22 1. On May 6, 2009, the Debtors filed a voluntary petition under Chapter 7  
23 Case No. 09-53442-RLE. The Debtors received a discharge in their Chapter 7 case on  
24 August 11, 2009.

25 2. The Debtors commenced Case No. 09-56955-RLE by filing a voluntary  
26 petition under Chapter 13 in the United States Bankruptcy Court for the Northern  
27 District of California, San Jose Division, on August 20, 2009. Because of the discharge  
28 the Debtors received in their Chapter 7 case, they are not entitled to receive a

1 discharge in this case (11 U.S.C. section 1328(f)).

2 3. The assets of the Debtors include real property commonly known as 540  
3 Mac Arthur Avenue, San Jose, California, 95128, A.P.N. 277-31-043 [hereinafter the  
4 "Property"]. The Property is more particularly described as set forth in Exhibit "A"  
5 attached to the Declaration of George Weisel filed herewith.

6 4. On or about October 19, 2007, the Lienholders recorded an Abstract of  
7 Judgment in the Official Records of Santa Clara County, Document No. 19624993. The  
8 original amount of the Abstract of Judgment in favor of Lienholders was \$815,025.00.

9 5. The Debtors are informed and believe that the Lienholders Abstract of  
10 Judgment had a balance, as of the filing of the Petition, of \$815,025.00.

11 6. As of the date of the filing of the Petition, the Property was encumbered as  
12 follows:

13	Property Taxes	\$0.00	
14	1 <sup>st</sup> Trust Deed Note - Downey Savings	<u>\$595,241.29</u>	
15	Subtotal Senior Encumbrances		\$595,241.29
16	2 <sup>nd</sup> Trust Deed - CitiMortgage, Inc.	<u>\$84,822.33</u>	
17	Total:		\$680,063.62

18 6. As of the date of the filing of the Petition, the Property had a fair market  
19 value of \$468,500. The Debtors base this valuation upon a report from Zillow.com of  
20 the Property which was done a couple of days prior to filing of their Petition and upon  
21 their personal knowledge as the property owners. Based upon this good faith estimate,  
22 the Property was listed on their Schedule A with a fair market value in the sum of  
23 \$468,500. See the Declaration of George Weisel filed herewith.

24 7. Accordingly, the claim of the Lienholders for repayment of the Abstract of  
25 Judgment is wholly unsecured because the sum of the senior encumbrances on the  
26 Property was greater than the value of the Property on the date of the filing of the  
27 Petition.

28 WHEREFORE, the Debtors pray for an order:

1           1. Valuing the Property at \$468,500 as of the date of the filing of the Petition;  
2           2. Valuing the lien of Lienholders at zero for purposes of the Debtors' Chapter  
3   13 Plan and further determining that this lien is entirely, permanently, and for all other  
4   purposes void and unenforceable conditioned only on the Debtors' completing all  
5   payments required under their Chapter 13 Plan.  
6           3. Authorizing the Debtors to obtain a final judgment after completion of their  
7   Chapter 13 Plan consistent with the Court's Guidelines for Valuing and Avoiding Liens  
8   in Individual Chapter 11 Cases and Chapter 13 Cases.  
9           4. For such other and further relief as is just and equitable.

10 || Dated: August 12, 2010

BINDER & MALTER, LLP

By: /s/ Michael W. Malter  
Michael W. Malter, Esq.  
Attorney for Debtors

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